

§ 351.704

satisfactorily perform the duties and responsibilities of the position.

[56 FR 65417, Dec. 17, 1991]

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (i.e., a position under an appointment not to exceed 1 year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under § 351.701 or § 351.704(a)(1) of this part. This option does not preclude an agency from, as an alternative, also using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the po-

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sition from which the employee is released.

[51 FR 319, Jan. 3, 1986, as amended at 56 FR 65417, Dec. 17, 1991; 60 FR 3063, Jan. 13, 1995]

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a)(1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee

SOURCE: 60 FR 2679, Jan. 11, 1995, unless otherwise noted.

§ 351.801 Notice period.

(a)(1) Except as provided in paragraph (b) of this section, each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at

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least 60 full days before the effective date of release.

(2) Under authority of section 4433 of Pub. L. 102-484, as amended by section 911(a) of Pub. L. 103-337, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency to a specific written notice at least 120 full days before the effective date of release when a significant number of employees will be separated by reduction in force. The 120 days notice requirement is applicable during the period from January 20, 1993, through January 31, 2000. The basic requirement for 60 full days specific written notice set forth in paragraph (a) of this section is still applicable when less than a significant number of employees will be separated by reduction in force.

(3) At the same time an agency issues a notice to an employee, it must give a written notice to the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. When a significant number of employees will be separated, an agency must also satisfy the notice requirements of §§ 351.803 (b) and (c).

(b) When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days, or a notice period of less than 120 days when a significant number of Department of Defense employees will be separated. The shortened notice period must cover at least 30 full days before the effective date of release. An agency request to OPM shall specify:

(1) The reduction in force to which the request pertains;

(2) The number of days by which the agency requests that the period be shortened;

(3) The reasons for the request; and

(4) Any other additional information that OPM may specify.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.607 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the em-

ployee's release from the competitive level.

[60 FR 2678, Jan. 11, 1995, as amended at 60 FR 44254, Aug. 25, 1995]

§ 351.802 Content of notice.

(a)(1) The action to be taken, the reasons for the action, and its effective date;

(2) The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last 4 years;

(3) The place where the employee may inspect the regulations and record pertinent to this case;

(4) The reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608;

(5) Information on reemployment rights, except as permitted by § 351.803(a); and

(6) The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with § 1201.21 of this title.

(b) When an agency issues an employee a notice, the agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations found in part 351 of this chapter.

[60 FR 2678, Jan. 11, 1995, as amended at 60 FR 44254, Aug. 25, 1995]

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration under subparts B (Reemployment Priority List) and C (Displaced Employee Program) of part 330 of this chapter. The employee also must be given information concerning how to apply for unemployment insurance through his or her appropriate State program. This information must be provided either in or with the specific reduction in force notice, or as a supplemental notice to the employee.